

REMARKS/ARGUMENTS

In an Office Action mailed January 19, 2005, the Examiner rejected all pending claims 1-41. The Examiner rejected claims 1-11 as either anticipated by or obvious over US 6,206,356 (Beloff). The Examiner rejected claims 1-41 as anticipated by or in the alternative as obvious over US 5,366,208 (Benjamin), US 2,639,659 (Fry), US 5,514,443 (Chen), US 4,798,372 (Tingle), US 5,249,699 (Williams), US 4,553,352 (Powell), US 5,385,261 (Lippisch), or US 6,047,845 (Rapaz).

Applicants respectfully submit that the Examiner's rejection fails to establish a prima facie case of either anticipation or obviousness with respect to any of the rejected claims for the reasons stated below.

Examiner's Obviousness Rejections Should Be Withdrawn:

Applicants respectfully submit that the Examiner's comments in support of the obviousness rejections of claims 1-41 should be withdrawn for failing to show a prima facie case of obviousness.

Applicants respectfully submit that the Examiner's stated reasons for rejecting claims 1-11 as obvious over Beloff and for rejecting claims 1-41 over any of Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz do not establish a prima facie case of obviousness at least because they: (1) fail to explain the line or reasoning supporting the rejections; (2) fail to establish a motivation to combine the various cited references; and (3) improperly combine non-analogous art. In the event the Examiner maintains the rejections, applicants respectfully request that the Examiner provide a more detailed explanation citing particular passages or figures of particular references to explain which limitations are shown and to explain where the motivation to combine the various references is found.

No Line of Reasoning Given:

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line or reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142; (citing Ex parte Clapp, 227, USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)).

In this case, the cited references do not expressly or impliedly suggest the rejected claims and the examiner has failed to provide any line of reasoning as to why an artisan would have found the claimed inventions obvious over the cited references. Instead, the Examiner merely states, with respect to claims 1-11, that "it would have been obvious to provide the device of Beloff with the missing elements for design or aesthetic reasons or to make the tray more suitable to hold specific types of content," and with respect to claims 1-41, that "[a]ll of the references applied in this ground of rejection disclose a tray-like structure on which the claimed residue collector reads on some type of board, rack, tray or other device to be supported on structure extending from the tray-like structure." Applicants respectfully submit that these comments do not support a prima facie case of obviousness with respect to any of the original claims - and would not support a prima facie case of obviousness with respect to any of the amended or new claims.

No Motivation to Combine:

"When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. MPEP 2142 (citing Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986)). In this case, the examiner has failed to explain why the disparate, non-analogous art would be combined or how those combinations teach or suggest the rejected claims. The Examiner has failed to provide any explanation as to why a person of skill in the art would

combine a "dish drainer" (Lippisch), a "plant container" with "orifices 24" in the bottom of the reservoir tray (Powell), a "dinner plate" (Rapaz), a "hazardous material container" with "forklift grooves" (Williams) - with each other or with any of the other cited references. Moreover, these references would not qualify as prior art since they are non-analogous.

Non-Analogous Art:

"The examiner must determine what is 'analogous prior art' for the purpose of analyzing the obviousness of the subject matter at issue. 'In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.'" MPEP 2141.01(a) (citing In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)). In this case, Applicants respectfully submit that a "dish drainer," a "plant container," a "dinner plate," and a "hazardous material container" are not analogous art and may not, therefore, be combined to show obviousness of the rejected claims.

Claims 1-41 Allowable:

Applicants respectfully submit that pending original and amended claims 1-41 are allowable over the cited references for the following reasons.

Claims 1-11:

Claim 1 as amended is not anticipated by or obvious over Beloff and is not obvious over any of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination, at least because none of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz disclose, teach or suggest all of the limitations of any of claim 1. Dependent claims 2-5 and 8-11 are also allowable over the cited references. Claims 6 and 7 are herewith cancelled.

The cited references do not disclose, teach or suggest at least the following limitations:

“ . . . a plurality of support members for laterally and perpendicularly supporting a prep-board in a prep-position for preparing articles on a prep-surface of the prep-board, the support members being inboard of the collection perimeter, wherein the support members each comprise a lateral support portion, the lateral support portion facing an inboard direction and arranged to meet a perpendicular edge of a prep-board, and comprise a perpendicular support portion, the perpendicular support portion being adjacent to the lateral support portion and arranged to support a horizontal surface of a prep-board, wherein the perpendicular support portion lies below the minimum height of the residue collector surface along the collection perimeter.”

as recited in claim 1 and incorporated into dependent claims 2-5 and 8-11. Claims 1 and dependent claims 2-5 and 8-11 each also include additional limitations which further distinguish the claims over the cited references.

Beloff discusses a “holder (32) which surrounds the base member (12) and may likewise serve to capture liquids which drain from the food item being prepared.” 5:12-14. “A plurality of first support members (14) are disposed on each side of the center longitudinal axis of the base member (12).” 2:53-55; FIG. 2. Beloff does not disclose, teach or suggest that “the perpendicular support portion lies below the minimum level of the collection perimeter.”

In the Office Action, the Examiner stated, that, “[s]hould Beloff be later deemed not to show certain features of the dependent claims, such as the dimensions of claim 5, it would have been obvious to provide the device of Beloff with the missing elements for design or aesthetic reasons or to make the tray more suitable to hold specific types of content.” OA at page 2. Applicants respectfully submit that this statement does not support a prima facie case of obviousness because the Examiner does not specify to which

"certain features of the dependent claims" the rejection applies. Although the comments apparently relate at least to "the dimensions of claim 5", the "such as" language implies that the comments may relate to other limitations in other claims - but the Examiner does not specify which limitations or which claims. Furthermore, "matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art." MPEP 2144.04 I (emphasis added). Applicants respectfully submit that the rejection would not apply to features which are not "only" ornamental and the Examiner has failed to state which features to which it applies.

Claims 12-41:

Applicants respectfully submit that claims 12-41 are not unpatentably obvious over any of Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz.

Claims 12-26, 28 and 30-33:

Applicants respectfully submit that amended claim 12 and dependent claims 13-26, 28, 30-33 are not obvious over any of Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination. Claims 13-26, 28 and 30-33 are not obvious over the cited references at least because none of the cited references disclose, teach or suggest all of the limitations of any of the claims. For example, the cited references do not disclose, teach or suggest at least the following limitations:

"... wherein the prep-board perimeter and the collection perimeter define a continuous gap around the prep-board perimeter; and wherein the support members each comprise a lateral support portion, the lateral support portion facing an inboard direction and arranged to meet a perpendicular edge of a prep-board, and comprise a perpendicular support portion, the perpendicular support portion being adjacent to the

perpendicular support portion and arranged to support a horizontal surface of the prep-board."

as recited in claim 12 and as incorporated into dependent claims 13-26, 28 and 30-33. Each of the claims 12-26, 28 and 30-33 each include additional limitations that serve to further distinguish the rejected claims over the cited references.

Claims 27 and 29:

Applicants herewith cancel claims 27 and 29. Applicants respectfully request that the Examiner withdraw the rejections as moot.

Claims 34-37:

Applicants respectfully submit that amended claim 34 and dependent claims 35-37 are not obvious over any of Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination. Claims 35-37 are not obvious over any of the cited references at least because the cited references do not disclose, teach or suggest all of the limitations of the claims. For example, the cited references do not disclose, teach or suggest at least the following limitations:

"... a plurality of prep-boards of different types adapted to be removably supported in a prep-position by the residue collector ..."

as recited in claim 34 and incorporated into dependent claims 35-37. Each of the claims 34-37 also include additional limitations that serve to further distinguish the claims over the cited references.

In the Office Action, the Examiner stated, "[s]hould the applied references be later deemed to be missing features such as ... the plurality of prep boards of claim 34, it would have been obvious to provide the prior art devices disclosed in the references with the missing elements in order to make them more suitable for holding additional or specific content." The Examiner failed to cite a prior art reference in support of this assertion.

"It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." MPEP 2144.03A (citing Zurko, 258, 258 F.3d 1379, 1385 (Fed. Cir. 2001)). Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 34-37.

Claims 38-41 and 58:

Applicants respectfully submit that amended claims 38 and 40, as well as corresponding dependent claims 39 and 41, are not obvious over any of Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination. For example, the cited references do not disclose, teach or suggest at least the following limitations:

" . . . a residue collector comprising a reservoir, a collection perimeter encompassing the reservoir and a plurality of support members inboard of the collection perimeter, the collection perimeter having a maximum level in relation to a bottom surface of the reservoir and a minimum level in relation to said bottom surface, the plurality of support members having lateral support portions and perpendicular support portions laterally and perpendicularly supporting the prep-board in a prep-position with a top surface of the prep-board lying above the maximum level and an underside of the prep-board lying below said minimum level"

as recited in claim 38 and incorporated into dependent claim 39 and new dependent claim 58; and

" . . . wherein when the prep-board is coupled with the residue collector, the prep-board perimeter and the collection perimeter define a continuous gap around the prep-board perimeter and the surface of the prep-board is positioned above the maximum level of the collection perimeter when in the prep-position."

as recited in claim 40 and incorporated into dependent claim 41. Claims 38-41 and 58 each also include additional limitations which serve to further

distinguish the claims over the cited references. New claim 58 is supported in the specification as filed, at least at paragraph [0016].

New Claims 42-53 Allowable:

Applicants respectfully submit that new claims 42-53 are not unpatentable over any of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz. None of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination, disclose, teach or suggest all of the limitations of any one of the claims 42-53. For example, the cited references do not disclose, teach or suggest at least the following limitations:

“ . . . wherein the first, second, third and fourth support members each comprises a lateral support portion, arranged to abut a perpendicular outer edge of the prep-board when the prep-board is removably positioned in the prep-position, and each comprises a perpendicular support portion, arranged to support a horizontal bottom surface of the prep-board when the prep-board is in the prep-position.”

as recited in claim 42 and incorporated into dependent claims 43-50;

“ . . . the plurality of prep-boards adapted to be supported in a prep-position by the residue collector comprise a first prep-board, having a first unique visible code which distinguishes it from the other of the plurality of prep-boards, and a second prep-board, having a second unique visible code which distinguishes it from the other of the plurality of prep-boards..”

as recited in claim 51; and

“ . . . wherein the first unique visible code has a first color and the second unique visible code has a second color that is different from the first color.”

as recited in claim 52. All of the claims 42-52 also include additional limitations that further distinguish the claims over the cited references.

Applicants respectfully submit that new claim 53 is allowable for reasons given above with respect to claim 1. New claim 53 also includes additional limitations that further serve to distinguish claim 53 from the cited references.

Applicants respectfully submit that all of the new claims 42-53 are fully supported in the specification, as filed, for example, at least at FIGS. 3A, 3B and 4 and paragraphs [0020]-[0030].

New Claims 54-57 Allowable:

Applicants respectfully submit that new claims 54-57 are not unpatentable over any of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz. None of Beloff, Benjamin, Fry, Chen, Tingle, Williams, Powell, Lippisch or Rapaz, alone or in combination, disclose, teach or suggest all of the limitations of any one of the claims 54-57. For example, the cited references do not disclose, teach or suggest at least the following limitations:

“ . . . a collector surface having a collection perimeter encompassing a reservoir having a bottom surface, wherein the collector surface slopes downward into the reservoir inboard of the collection perimeter and slopes downward away from the reservoir outboard of the collection perimeter, and wherein the collection perimeter has a maximum level and a minimum level relative to said bottom surface;

a plurality of support members, wherein each of the plurality of support members has a lateral support portion adapted for providing lateral support to a prep-board in a prep-position and having a perpendicular support portion adapted to provide perpendicular support to a prep-board in a prep-position;

wherein each of the plurality of the support members lies inboard of the collection perimeter.”

as recited in claim 54;

" . . . wherein each of the lateral support portions extend above the maximum level."

as recited in claim 55;

" . . . wherein each of the perpendicular support portions lies below the minimum level."

as recited in claim 56;

" . . . wherein each of the lateral support portions extends above the maximum level and each of the perpendicular support portions lies below the minimum level."


as recited in claim 57.

Applicants respectfully submit that the new claims 54-57 are fully supported in the specification, as filed, for example, at FIGS.1 and 2 and paragraphs [0014]-[0019].

CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Examiner withdraw all of the rejections and allow claims 1-5, 8-26, 28 and 30-58.

Respectfully submitted,



Peter Reitan
Registration No. 48,603

Dated: 2/22/05

Law Offices of Larry K. Roberts, Inc.
P.O. Box 8569
Newport Beach, CA 92658-8569
Telephone (949) 640-6200
Facsimile (949) 640-1206